

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LINDA GRIFFITH and JEANETTE WENZL, on)  
behalf of themselves, individually, and on behalf )  
of all others similarly situated, and on behalf of )  
the Providence Health & Services Cash Balance )  
Retirement Plan, )

Plaintiffs, )

v. )

PROVIDENCE HEALTH & SERVICES; )  
RETIREMENT PLANS COMMITTEE; ELLEN )  
WOLF; JOHN and JANE DOES 1-20, inclusive, )  
MEMBERS OF THE RETIREMENT PLANS )  
COMMITTEE; JOHN OR JANE DOE 21, )  
PLAN DIRECTOR; HUMAN RESOURCES )  
COMMITTEE OF THE BOARD OF )  
DIRECTORS; JOHN AND JANE DOES 22-40 )  
inclusive, MEMBERS OF THE HUMAN )  
RESOURCES COMMITTEE OF THE BOARD )  
OF DIRECTORS; ROD HOCHMAN; BOARD )  
OF DIRECTORS OF PROVIDENCE HEALTH )  
& SERVICES; MICHAEL HOLCOMB )  
CHAUNCEY BOYLE; ISIAAH CRAWFORD )  
MARTHA DIAZ ASZKENAZY; PHYLLIS )  
HUGHES; SALLYE LINER; KIRBY )  
MCDONALD; DAVE OLSEN; AL PARRISH )  
CAROLINA REYES; PETER J. SNOW )  
MICHAEL A. STEIN; CHARLES WATTS; )  
BOB WILSON; JOHN AND JANE DOES 41- )  
50, inclusive; )

Defendants. )

No. C14-01720-JCC

DEFENDANTS' MEMORANDUM IN  
SUPPORT OF FINAL SETTLEMENT  
APPROVAL AND IN RESPONSE TO  
OBJECTIONS

NOTE ON MOTION CALENDAR:  
MARCH 21, 2017

TIME: 9:00 A.M.

COURTROOM: 16206

DEFS' MEMO IN SUPPORT OF FINAL  
SETTLEMENT APPROVAL AND IN RESPONSE  
TO OBJECTIONS (C14-01720-JCC)

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Defendants respectfully request that the Court grant final approval of the Class Action Settlement Agreement (“Settlement or Settlement Agreement”), and final certification of the Class pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or 23(b)(2). In support Defendants submit this memorandum responding to three objections filed by class members.

## I. INTRODUCTION

After vigorous arm’s-length negotiations by experienced counsel with the assistance of a third-party JAMS mediator, Robert Meyer, Esq., who has substantial experience mediating cases concerning ERISA and retirement plan issues, including cases involving the church plan exemption in ERISA, the parties agreed on the Class Action Settlement Agreement, which the Court preliminarily approved on December 6, 2016, Dkt. No. 52. The parties have fully complied with the Preliminary Approval Order, including providing notice of the Settlement to the Settlement Class<sup>1</sup> and mailing Class Action Fairness (“CAFA”) notices to national and state officials as required by CAFA.<sup>2</sup> On behalf of Defendants, Rust Consulting mailed 75,505 individual Notices to class members. The deadline for objecting to the proposed Settlement was set as February 21, 2017.<sup>3</sup> In response, three individuals lodged objections with the Court. Specific responses to each objection follow.

## II. DISCUSSION

### 1. Karen Marceaux

Karen Marceaux filed an objection to the Settlement on February 10, 2017. *See* Dkt. No. 61. Ms. Marceaux states that she objects “to the fairness and reasonableness of the Settlement.” However, she provides no further information as to the nature of her objection. Without any specifics, Ms. Marceaux’s objection does not warrant a response other than to

<sup>1</sup> *See* Affidavit of Abigail Schwartz for Rust Consulting, Inc., Dkt. No. 55.

<sup>2</sup> *See* Declaration of Benjamin Saper, Dkt. No. 56.

<sup>3</sup> *See* Order Preliminarily Approving Class Action Settlement, Dkt. No. 52, at ¶ 6.

1 refer to Plaintiffs' Motion for Final Approval (Dkt. No. 54) and related filings demonstrating  
2 the fairness and reasonableness of the Settlement.

### 3 **2. Tamara Towers Parry, M.D.**

4 Tamara Towers Parry, MD, a former employee of Swedish Health Services (SHS), a  
5 secular affiliate of PHS, filed an objection to the Settlement on February 22, 2016. *See* Dkt.  
6 No. 63.<sup>4</sup> She bases her objection partly on the faulty premise that the Settlement will allow  
7 Defendants to skirt federal and state oversight. First, the Plan is well-funded; it has paid all  
8 accrued benefits to date and expects to pay all benefits that accrue in the future. In addition, the  
9 Plan is subject to IRC tax qualification requirements, as well as to fiduciary obligations under  
10 state trust law to protect the interests of "church plan" participants. *See, e.g.*, RESTATEMENT  
11 (THIRD) OF TRUSTS §§ 76 (duty to follow trust document and law), 77 (duty of prudence), 78  
12 (duty of loyalty) (2007). Providence Health and Services ("PHS") and the Providence Health  
13 & Services Cash Balance Retirement Plan ("Plan") are subject to state contract law. The  
14 Settlement also obligates the participating institutions to contribute "sufficient funds to pay the  
15 vested benefits payable to participants under the terms of the Plan as they are due." Dkt. No.  
16 50-1, Settlement Agreement ¶ 9.1.

17 Dr. Parry states that "PHS's FBO status allows them to fund their health plan without  
18 state and federal oversight." This also is not true—Providence Health & Services made an  
19 irrevocable election under section 410(d) of the Internal Revenue Code so that ERISA applies  
20 to the Providence Health & Services Health and Welfare Benefit Plan. As an SHS employee,  
21 Dr. Parry was covered by the SHS Employee Benefit Plan, which has always been governed by  
22 ERISA because SHS is a secular organization. Moreover, neither the PHS nor the SHS health  
23 plan is the subject of this litigation, so any objection from Dr. Parry based upon the PHS or  
24 SHS health plans is irrelevant.

25 Dr. Parry also states that Providence's status as a faith-based organization allows it to  
26 violate laws that protect the seriously ill and the disabled, including federal contract

27 <sup>4</sup> Dr. Parry's objection was filed of record one day late.

1 compliance, the ADA, and HIPPA. Contrary to her assertion, this Church Plan litigation and  
 2 the Settlement have no impact on any of those statutory and regulatory schemes, and their  
 3 applicability is unchanged by the Settlement.

4 Dr. Parry contends that PHS is not a church. However, her personal feelings have no  
 5 relevance to the legal issue of whether PHS is controlled by or associated with the Catholic  
 6 Church.

7 Finally, Dr. Parry complains about “employee violations [that] started when [she]  
 8 developed a rapidly progressive neurologic condition.” She continues that the PHS & SHS  
 9 health plans—which are governed by ERISA and are not subject to the Settlement—failed in  
 10 their handling of her health care coverage in connection with her neurologic condition. These  
 11 complaints are also irrelevant because they deal with health plans, not the retirement plan at  
 12 issue in this litigation. This Settlement does not cover any health plan and has no connection to  
 13 Dr. Parry’s medical complaints or coverage.

### 14 **3. Patrick C. Petersen**

15 Patrick C. Petersen filed an objection on February 21, 2017. *See* Dkt. No. 62. Mr.  
 16 Petersen states that he objects to the Settlement because Group I should be divided into two  
 17 separate groups: beneficiaries who are retired, and beneficiaries who continue to work at PHS.  
 18 His objection appears to be based on his claim that in 2009 or 2010, PHS allegedly illegally  
 19 changed the Plan.

20 In fact, in 2009 Providence did make several modifications to its retirement program,  
 21 including freezing an existing defined benefit plan (the Plan) and creating a new defined  
 22 contribution plan. The International Union of Operating Engineers, Local 286 (the “Union”),  
 23 of which Mr. Petersen is a member, filed a grievance and initiated arbitration related to the  
 24 changes, alleging that the collective bargaining agreement required PHS to bargain with the  
 25 Union before making unilateral changes to the Plan. Arbitration resulted in PHS and the Union  
 26 engaging in further collective bargaining negotiations and resolving all disputes related to the  
 27 changes to the Plan. *See* National Labor Relations Board, Feb. 22, 2012 Letter approving

1 withdrawal of the charge, attached as Exhibit 1; Feb. 21, 2012 Email to Arbitrator Kessler  
 2 reporting that the Union ratified the new agreement resolving all issues in arbitration, attached  
 3 as Exhibit 2. Mr. Petersen now seeks to use the occasion of the Settlement of the current  
 4 lawsuit, which is unrelated to the Union's prior dispute, to re-litigate the earlier grievance.

5 But contrary to the claims of Mr. Petersen's objection, there has been no reduction of  
 6 accrued benefits under the Plan. His objection appears to be based on the freezing of  
 7 additional, future accruals and the fact that the new defined contribution plan, which was  
 8 implemented in 2010, provided a reduced employer contribution. These grievances are  
 9 irrelevant to this litigation and Settlement, which is limited to the question of whether the Plan  
 10 is properly classified as a Church Plan. Further, the freezing of the Plan was a permissible  
 11 settlor function and not a fiduciary decision under ERISA. *See Hughes Aircraft Co. v.*  
 12 *Jacobson*, 525 U.S. 432, 444 (1999) (outlining settlor functions).

13 Mr. Petersen also states that Providence "previously filed case documents with the IRS  
 14 that deny rights of being: 'church association of churches and convention of churches.'" This  
 15 is not true, the Plan has always been operated as a Church Plan and PHS has not filed any  
 16 documents with the IRS to the contrary.

17 Mr. Petersen claims that "PH&S retirement plans having failed the 'Church Plans'  
 18 requirements must be consider [sic] ERISA Plans." This unsupported legal conclusion is not  
 19 relevant to the fairness of the Settlement. Mr. Petersen's personal view as to whether the Plan  
 20 is a Church Plan has no relevance to the legal issue of whether PHS is controlled by or  
 21 associated with the Catholic Church. And the Settlement provides additional protections for  
 22 benefits that are also protected by this well-funded Plan under both state contract and trust law.

### 23 III. CONCLUSION

24 For the above reasons, Defendants respectfully submit that this Settlement should be  
 25 granted final approval because it is a fair and reasonable result. Moreover, the Settlement Class  
 26 meets all of the requirements of Rule 23 and should be finally certified.

1 DATED this 14th day of March, 2017.

2 DAVIS WRIGHT TREMAINE LLP  
3 Attorneys for Providence Defendants

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

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DATED this 14th day of March, 2017.

s/ Michael Reiss  
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